CONFERENCE ON DISARMAMENT

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Working Paper on Challenge Inspections/Inspections on Request

I. Introduction

1. The verification system flowing from an arms limitation treaty encompasses a group of rules, methods, procedures and verification techniques aimed at guaranteeing that any Contracting Party comply with its obligations. In other terms: verification is a human activity for tangible purposes under given parameters, so that hidden intentions can never be detected.

2. As a human invention, verification is far from being 100 per cent accurate: absolute verification or a perfect verification system remain a utopian exercise. On the other hand, verification is not enough in itself to deter any Contracting Party from violating its obligations. A set of credible sanctions is needed to match the detection risk. Generally speaking, it seems easier to verify the complete elimination of something than its partial banning. However, the difficulties arise "au fur et à mesure" the ambiguities surrounding the main obligations or the complexities of the subject matter increase. In any event, the verification of the arms limitation treaties is a kind of confidence-building measure intended to allay the fears among the States involved and provide them with a reasonable degree of reciprocal security.

II. Objectives and Structure

3. The multilateral Covention on the complete and effective prohibition of chemical weapons and on their destruction aims at two main objectives: (i) chemical disarmament which implies, grosso modo, the elimination of all existing arsenals of chemical weapons as well as all chemical weapon production facilities of the States Parties; and (ii) peaceful uses of chemical industry, including the prevention of the development of chemical weapon capabilities.

4. To achieve these objectives the international verification system, as it appears in the "Rolling Text" (document CD/1046), currently under elaboration, has already a structure based on two main pillars: (i) the verification of compliance with the provisions pertaining to chemical disarmament (articles III, IV and V, in accordance with annexed texts); and (ii) the

verification of compliance with the provisions dealing with activities not prohibited under the Convention (article VI, paras. 1 and 2, in accordance also with annexed texts). In addition, both are strengthened by a complementary mechanism specially aimed at clarifying any doubt or concern about compliance with those obligations, the short-notice challenge inspection/inspection on request being its most outstanding component (article IX).

III. Challenge Inspections/Inspections on Request

5. This kind of inspection is one of the main features of the international verification system. Besides the fact already mentioned that absolute verification is beyond human possibilities, routine verification in all facilities relevant to the Convention implies an "unmanageable burden" on the Technical Secretariat with direct repercussion in its size and financing of the numerous verification activities.

6. Thus, the challenge inspection/inspection on request constitutes an indispensable device for complementing a set of reasonable and affordable verification measures related to articlves IV, V and VI. In this connection, challenge inspection/inspection on request, could be taken as a confidence-building measure or a "safety net" in order to safeguard confidence and prevent threats against the security of the States Parties to the Convention.

7. Bearing in mind the principle of non-discrimination as recognized by the 1988 session of the United Nations Disarmament Conference and endorsed by the United Nations General Assembly, the implementation of this complementary mechanism should not give place to any kind of discrimination between the requesting and the requested States Parties. On the other hand, every State Party should accept as a basic principle that all Contracting Parties intend to behave correctly and that they will comply faithfully with the provisions of the Convention. In this line of thought, the right of the requesting State must not override the right of the requested State. "Bonna fide" of the requesting and requested States Parties is of utmost importance so as to preclude abuse of this kind of inspection. Accordingly, the notion of suspicion should be excluded at the beginning.

8. Furthermore, the right to set-off a challenge inspection/inspection on request, is not unlimited or at least it should be restricted at the beginning precisely because its purpose is to demonstrate compliance with the obligations and not to prejudge suspected activities in the requested State. Additionally, the protection of confidential information also constitutes another barrier to free access any time to the declared facilities or areas for verification purposes. So, the notion that this kind of inspection is to be "conducted anywhere without delay" seems premature if it is mandatory from the very beginning and the obligatory presence of observers of the requesting State risks to question not only the reliability of the international verification system, but also the principle of non-discrimination among States involved.

9. One way to solve this problem, without placing in jeopardy the universal acceptance of obligatory challenge inspection/inspection on request, could be to conduct this kind of inspection in two stages. In the first one, technically oriented and strictly confidential, all the steps will remain

within the competence and powers of the Director-General. Upon receipt of a request coming from a State Party, he should inform, within the following 24 hours, the requested State as well as the Executive Council. Then, in the following 24 hours he should designate an inspection team which should immediately reach the territory of the requested State and have access to any facility or installation relevant to the request, but not yet "anywhere".

10. However, if the inspection team does not succeed in clarifying the existing doubts or concerns as they appear in the request, then the Executive Council should meet within the following 48 hours to consider the extension of the mandate to "anywhere" within the scope of the request in order to make a final assessment about the situation and whether or not the Convention is being violated. This second stage would be of a politial nature and utilized as a weapon of last resort in the field of inspections, before further action - including possible sanctions - is taken.

11. There is no doubt that a request has to be as precise as possible. Although access must never be refused as a matter of principle, there is no question in the first stage of conducting a challenge inspection/inspection on request beyond the parameters of the request itself (nature of the suspected non-compliance, the specific site to be inspected and matters on which reassurance is required). That is not the case for the second stage where further access without any restriction relevant to the request should be the main component, given its highly political implications.

12. The principles of non-discrimination and good faith among requesting and requested States Parties might also render it advisable to include in the Convention provisions to discourage any abuse of the right of States Parties to request challenge inspection/inspection on request. Sanctions could be envisaged in case a State Party reiterates requests which are groundless.